(2)

No. 06-64

Supreme Court, U.S.
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In The

Supreme Court of the United States

ROBERT W. RAMSEY, PETITIONER

v.

JAMES IRVINE AND SANDRA IRVINE

On Petition For Writ of Certiorari
To The Supreme Court of The State of Colorado

PETITION FOR REHEARING

Robert W. Ramsey, Pro Se
THE INN AT SILVERCREEK
62927 US HIGHWAY 40 # 470
Granby, Colorado 80446
Mailing Address – PO Box 1904
Grand Lake, CO 80447
(970) 509-0064

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OPINIONS BELOW

Appendix A and Appexdix B on page 11 of this petition [and petition # 06-64].

STATEMENT OF GROUNDS / JURISDICTION

This petition for rehearing presents material not previously presented that should be of a controlling nature. The material would have been irrelevant prior to the denial of my petition for a writ of certiorari by this court of last appeal. The violation of my rights under the State and Federal Constitutions and the Code of Judicial Conduct is directed to this Court.

The Petition for Writ of Certiorari was denied by the Colorado Supreme Court on April 10, 2006. The jurisdiction of this Court was invoked under 28 U.S.C. 1257. Certiorari was denied by this Court on October 2, 2006. This petition was placed in the U.S. Mail on November 16, 2006 in accordance with the provisions of the letter from this Court requiring resubmission.

STATUTES, RULES, TORTS OR REGULATORY PROVISIONS INVOLVED

1. **Colorado Jury Instructions 3d**
   (a) A series of acts may constitute outrageous conduct, **even though any one of the acts might be considered only an isolated unkindness or insult [emphasis added].** CJI 3d 23:2 p.73.
   (b) The duration and intensity of emotional distress are factors to be considered in determining its severity. CJI 3d 23:4 p. 78.
   (c) A factor which is not expressly articulated in the Restatement, but which is notable in its absence in many of the cases in which recovery has been denied for failure to show actionable extreme and outrageous conduct on the part of the defendant -

> and which is present in many of the cases allowing recovery is a pattern of offending behavior over a period of time. The test for actionable outrage has been characterized as whether the accumulation of the defendant's conduct toward the plaintiff, even if any individual instance of such conduct would not be outrageous on its own merits, clearly goes beyond what would be merely offensive to a reasonable person and exceeds all bounds of decency. AmJur 43 POF 2d 43-1 § 8 pp. 48,49.

2. Whether the defendant's behavior is viewed as a course of conduct or as a single incident, "it is the totality of conduct that must be evaluated to determine whether outrageous conduct has occurred." **Zalnis v. Thoroughbred Datsun Car Co., 645 P.2d 292, 294 (Colo.App. 1982).**

3. **Rules of the US Supreme Court, Rule 44**, which provides for this petition within 25 days of denial of a petition for a writ of Certiorari. [Also see Certificate of filing on page 12 of this petition].

4. Wyo. 1905. "Spite fences" are fences, often high and unsightly, erected to annoy a neighbor or adjoining landowner by obstructing his air, light, or view. Anthony Wilkinson Live Stock Co. v. McIlquam, 83 P. 364, 14 Wyo. 209 3 L.R.A.N.S. 733.

CONSTITUTIONAL PROVISIONS INVOLVED

1. **The First Amendment to the United States Constitution** provides, in pertinent part: Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances.

2. **The Fourteenth Amendment to the United States Constitution § 1** provides, in pertinent part:
   . . . All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
3. **The Fifth Amendment to the United States Constitution** provides, in pertinent part: No person shall be . . . deprived of life, liberty, or property, without due process of law. . . .
4. **Article II Section 25 of the Colorado Constitution**: Due process of law. No person shall be deprived of life, liberty or property, without due process of law.
5. **Article II Section 3 of the Colorado Constitution: Inalienable rights.** All persons have certain natural, essential and inalienable rights . . . .

STATEMENT OF BACKGROUND

A. CORRECTIONS

1) The law of the case represented by the [annotated] Colorado Jury Instructions and American Jurisprudence was omitted from the Petition for a Writ of Certiorari and included here.
2) In the Petition for a Writ of Certiorari, the reference to the guarantee of the rights of life, liberty and the pursuit of happiness was incorrectly attributed to the US Constitution when it is, of course, from the Declaration of Independence.

B. RESPECT

1) In the first ruling from the District Court I was analogously referred to as "Felix" of the "Odd Couple"[1] and told my situation with my neighbors created nothing much beyond "a social discomfort, however pronounced" [see Appendix A, p.11].

As the Honorable Sandra Day O'Connor once pointed out, **sometimes findings of lower courts are so intertwined with a violation of a person's Constitutional rights that they have to be looked at even though findings are not usually grounds for review by this court.**

My testimony and Ann L. Ramsey's testimony [in the record] unmistakably describes our feelings about the conduct of the Defendants and the emotional costs to us.

The killing and maiming of my family pets, the cleaning up of goat dung from my deck, the repairing of

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[1] *The Odd Couple* is widely known as a comedy based upon two "grumpy" old men.

my damaged road, the construction of a "spite fence",[2] the attachment to my fence built with my own hands to convert it to the Defendants' corral, and the waste flowing from the Defendants property onto mine, and *more* [all in the record] resulted in much more than "social discomfort" and I am not asking for the right to feel that way - the right is inalienable and does not come from the judiciary and it will not be taken away by the judiciary.

Nonetheless, I understood my responsibility to demonstrate that my concerns were shared by the community in which I lived. The *neighbors* who testified were a realtor, a lawyer, a bank vice-president, two veterinarians [expert witnesses], a building inspector and his wife, a horse expert, and a sheet metal worker [all in the record]. The Defense presented the realtor who sold the Defendants their property and a now deceased neighbor who could not even identify photos of the vehicle he testified about and neither witness stated much more than they thought everything was alright with them [in the "lost" record].

At one point the Judge interrupted my attempt to evidence community agreement[3] by stating, "You haven't been contradicted on that point yet, Mr. Ramsey". Of course, I never was contradicted on that point until the ruling was made and then I was contradicted only by the judge, never by any witness.

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[2] As far back as 1905 the Courts of Wyoming enjoined fences built for the purpose of annoying a landowner or adjoining neighbor. Anthony Wilkinson Live Stock Co. v. McIlquam, 83 P. 364, 14 Wyo. 209 3 L.R.A.N.S. 733. The Defendants submitted dozens of photos [all in the remaining record] of other fences in the area to support the notion that their fence was "normal", yet, there is *not one single photo* of a parallel fence in the proximity of another fence.

[3] [R Volume 2, p.296] Robert W. Ramsey: "What I'm trying to - - what I'm trying to get into evidence is that the feelings of the Plaintiffs are not unusual, are not something that another reasonable member of the community would[sic] feel under the same circumstances.

Nonetheless, Judge DeVilbiss, decided not to enjoin or admonish the conduct of the Defendants and he ruled that my wife and I only experienced a "social discomfort". The Judge also felt free to ignore the testimony of the respectable people who testified on our behalf.

Such conduct by a District Court Judge violates the Code of Judicial Conduct and the State and Federal Constitutions and basic precepts of what is fair and right.

2. In the second ruling from the District Court I was said to lack the common sense of a reasonable person and that caused me to commit a "folly" in objecting to the Defendants' fence [see Appendix B, p.11]. I was told my legal research should have made my folly apparent.[4] When I informed the court in a motion for post judgment relief that spite fences have been enjoined by other reasonable people [see footnote [2] p.5] there was no response and no change in the ruling. I was simply ignored.

To intentionally ignore longstanding precedent and the elements of the tort [law], and to ignore the good people of a neighborhood, and **supplant it all with a subjectively biased and personal view** is intolerable conduct on the part of a public servant entrusted with the responsibility of exercising the power given to him by the people he is to serve in accordance with the **limits and responsibilities** granted by the Code of Judicial Conduct and the State and Federal Constitutions. *The violation is or should be criminal.*

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[4] Just as fraud can be the underlying fact in an action for unjust enrichment instead of specifically pleading fraud, the "spite fence" was one underlying fact in my *action for intentional infliction of emotional distress.*

ARGUMENT / REASONS FOR GRANTING THE PETITION

It is understandable that mistakes will be made by the Judiciary; mistakes are made in every field of human activity. But when the mistake has been repeatedly exposed and repeatedly ignored by men who are too intelligent to be unable to see the facts and the law and relate the two reasonably, then the conduct must be deemed intentional.

I am not so naive as to think there will not be a gap between the ideal and the actual. But when the gap becomes a chasm that is hurting innocent lives, then something has to be done.

When I made the decision to address my problem with my neighbors in a civil manner rather that acting outside the law in anger,[5] I chose not to become a criminal but instead to be a responsible citizen. The Judiciary has ruled I had no right to seek a civil resolution and therefore no access to the courts. It is unacceptable in the United States of America to put a citizen in the position of either becoming a criminal or simply putting up with another's conduct that has been deemed intolerable in a civilized community.

The rules require that I state how this case is important to America. Simply, accountability in government is a basic principle in America, and the Judiciary has escaped it for so

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[5] As recently as the 1980's a young man, Mr. Mike Porter, in our rural area lost his life when guns became involved in a similar dispute he was having with his neighbor. It is common enough that most of us know of it happening now and again. In recent years nationwide news told the story of a man in nearby Granby, Colorado, who armored a bulldozer and destroyed many public and private buildings before killing himself.

long it appears to believe it is permanently immune from accountability. In their declaration of independence our forefathers cited King George for ignoring their petitions and we will not live under King George again.

This court can review this case and issue a ruling that can be read and understood by any normal citizen who expends the effort. Every American citizen (who gives the Judiciary its power) rightly expects a reasoned, restrained, and lawful ruling, **not an edict from on high**.

This is the last chance the Judiciary has to correct itself in my particular case. If it fails to correct itself, then rather than allow it to turn citizens who want to do what is right into criminals, the citizens of this country will make punishable the violation of a judge's sworn oath to uphold the Code of Judicial Conduct and the Constitutions of the State and Federal Government.

The movement is already underway in such formats as J.A.I.L. for Judges. The Honorable Sandra Day O'Connor has written on the subject[6] and I want to make absolutely clear that I am not suggesting, nor would I condone or in any way support the threat of physical harm to any member of the judiciary.

As our forefathers said, when a government becomes abusive to the point of being intolerable, and it has in my case as well as in many others[7], then it should be abolished or amended. If necessary, it will be lawfully amended.

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[6] See *J.A.I.L. for Judges* website for complete text.

[7] The Jail for Judges citizen initiative in South Dakota required the collection of over thirty thousand signatures in support of making judges accountable for violations of their sworn duty. At approximately the

The $17,000 sanction against me is insulting beyond belief. To think the court would demand I pay a person who *invented* a money motive for my suit, and attempted to sustain it by manipulating the rules of evidence, when my wife and I had to endure the killing and maiming of our family pets and the desecration of our sacred home is insulting beyond belief.

Only because I believe **it is important for this court to know my motives in this matter** I must tell you the following:

I easily qualify for bankruptcy because of the loss of my business in 2004.[8] However, I come from the old school that believes bankruptcy is absolutely a last resort because dishonoring debts is unethical on its face and I have not chosen avail myself of the relief. If justice does not prevail in this case and the ruling against me is not reversed I have no choice and no guilt regarding bankruptcy absolving me of this debt. **This case is not about money – it is about living in a civil society many people have died to create and protect and it is about a civil institution serving the people it is intended to serve within its proscribed limits.**

Finally, this is not a petition from a "grumpy old man" who is incapable of reasoning beyond "folly". It is from an American citizen who demands to be treated fairly by the government empowered to serve him and who is dedicated to changing the procedure if the current one cannot or does not work.

1200 signatures mark it was reported that not a single person had refused to sign.

[8] The recent changes in bankruptcy laws have little or no effect on me because my income doesn't come close to the median income for my state.

CONCLUSION

Thus far the judiciary has violated the code of judicial conduct, the state and federal constitutions, failed to provide proper notice, ignored rules of civil procedure, ignored the [tort] law of the case and its elements, lost a significant portion of the record,[9] ignored respectable testimony and refused to review lower court conduct in any meaningful sense. What more would the judiciary have to do to warrant correction by this court?

When this litigation began I had as much faith in the Judiciary as anyone could have. I defended it throughout and had no doubt it would correct itself. I am one ruling away from knowing I was wrong and something has to be done.

With this filing I have done *everything possible within the legal system* to resolve this matter. This is the *court* of last resort; but it is not the last resort. If it falls on me I will not tire nor quit until we succeed in making the judiciary accountable when it intentionally violates its sworn duty; the abuse of power will be curtailed.

This case is not very complex; in fact, it is quite simple and should not be inordinately time consuming for this court. After all the costs to me in time and money I am still willing, if this court requires it, to appear in person, armed with only a blank notepad and pen to record points of questions any Justice might have regarding the law or facts of this case, and answer those questions.

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[9] The legislature established "Courts of Record" for a good reason and I have been deprived of the opportunity to show the nonsensical nature of the defense of this case.

I respectfully request this court grant my petition for a writ of certiorari and ultimately overturn the lower courts and/or remand this case for a proper ruling based on the law of the case or remand it for a proper appeal.

Finally, this petition is dedicated to my former wife, Ann L. Ramsey, who suffered more than anyone from the failure of the legal system to fulfill its responsibilities.

Respectfully submitted:

Robert W. Ramsey, Pro Se
THE INN AT SILVERCREEK
62927 US HIGHWAY 40 # 470
Granby, Colorado 80446

Mailing Address:
P.O. Box 1904
Grand Lake, CO 80447

APPENDIX A

Garfield County, Colorado: District Court G98CV140 Div. C Plaintiffs: Robert W. Ramsey and Ann L. Ramsey v. Defendants: James Irvine and Sandra Irvine.

(In pertinent part) This unsuitability does not however create much beyond a social discomfort, however pronounced. This is an "Odd Couples" case in which, regrettably, Felix (played by Jack Lemon and here represented by the Ramseys) brought suit against Oscar (played by Walter Matthau and here represented by the Irvines).

DONE AND ORDERED this 10th day of February, 2000 Nunc Pro Tunc August 5, 1999 BY THE COURT: "s/J.E. DeVilbiss, Judge".

APPENDIX B

Garfield County, Colorado: District Court G98CV140 Div. C Plaintiffs: Robert W. Ramsey and Ann L. Ramsey v. Defendants: James Irvine and Sandra Irvine.

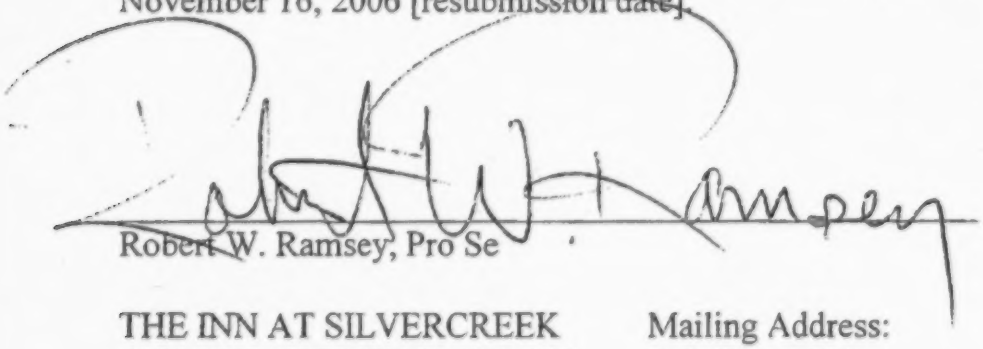
(In pertinent part) 16. Common sense would alert a reasonable person to the folly in a theory that grants the person a right to build one-and-half [sic] feet from his property line but denies his neighbor the right to do the same. Mr. Ramsey's legal research should have made this folly more obvious.

Done on January 7, 2005. BY THE COURT "s/J.B. Boyd" District Court Judge.

CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REHEARING is submitted in good faith and not for the purpose of delay. Its grounds are other substantial grounds not previously presented.

I certify under penalty of perjury that the foregoing is true and correct. Executed on October 27, 2006 and again on November 16, 2006 [resubmission date].



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